

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

**Civil Action No.** \_\_\_\_\_

**SYLVIA LEEDS**

**Plaintiff**

**v.**

**State Case No.: CL09004140-00**

**JOHN DOE ONE**

**and**

**JOHN DOE TWO**

**and**

**THE KROGER CO.**

**and**

**PENDUM, LLC**

**Defendants.**

**DEFENDANTS PENDUM LLC AND THE KROGER CO.'S  
JOINT NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1446**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Pendum LLC and The Kroger Co., by counsel, hereby jointly remove the civil action styled Sylvia Leeds v. John Doe One and John Doe Two and The Kroger Co. and Pendum LLC (Case No. CL09004140-00) from the Virginia Circuit Court for the City of Lynchburg to the United States District Court for the Western District of Virginia, Lynchburg Division. In support of this notice, the defendants state as follows:

1. On or about October 14, 2009, the plaintiff, Sylvia Leeds, filed her Complaint in the Circuit Court for the City of Lynchburg (Case No. CL09004140-00).

2. In her Complaint, the plaintiff named two fictitious defendants, John Doe One and John Doe Two, and two identified defendants, The Kroger Co. (“Kroger”) and Pendum LLC (“Pendum”).

3. Process was served on Pendum on October 20, 2009 and on Kroger on October 21, 2009.

4. Removal is timely, pursuant to 28 U.S.C. § 1446(b), because this Notice is filed within thirty days after the first receipt by Pendum, through service, of the Complaint.

5. Venue is proper in this Court, under 28 U.S.C. § 1441(a), because the Virginia Circuit Court for the City of Lynchburg is located within district and division of the United States District Court for the Western District of Virginia, Lynchburg Division.

6. Removal is proper, under 28 U.S.C. § 1441(a), because the United States District Court for the Western District of Virginia has original jurisdiction over this action by reason of diversity of citizenship of the parties. See 28 U.S.C. § 1332(a).

7. The matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as appears from the allegations contained in the plaintiff’s Complaint. See id. In her Complaint, the plaintiff has demanded \$250,000 plus interest from the date of judgment. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938) (holding that the amount in controversy claimed by the plaintiff controls, absent a showing of bad faith).

8. In her Complaint, the plaintiff alleges that, at the time of the commencement of this action in state court and since that time, she was and has been a citizen of the Commonwealth of Virginia.

9. Defendant Kroger was, at the time of the commencement of this action in state court, and still is, a citizen only of the State of Ohio. Kroger is a corporation incorporated and

existing under, and by virtue of, the laws of Ohio and with its principal place of business in Ohio. See 28 U.S.C. § 1332(c)(1) (“[A] corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business ...”).

10. Defendant Pendum was, at the time of the commencement of this action in state court, and still is, a citizen only of the States of Delaware and Florida. Pendum is a limited liability company whose only member is Pendum Holding Company LLC, which is a citizen of Delaware and of Florida. Pendum Holding Company LLC is a citizen of Delaware and Florida because its only member is Pendum Acquisition, Inc., which is a citizen of Delaware and of Florida. Pendum Acquisition, Inc. is a citizen of Delaware and Florida because it is a corporation incorporated and existing under, and by virtue of the laws of, Delaware and with its principal place of business in Florida. See Gen. Tech. Applications, Inc. v. Exro Ltda, 388 F.3d 114, 120 (4th Cir. 2004) (stating that limited liability companies are assigned the citizenship of their members); see also 28 U.S.C. § 1332(c)(1) (prescribing the determination of corporate citizenship).

11. The citizenship of the fictitious defendants named in the plaintiff’s Complaint, John Doe One and John Doe Two, is disregarded for the purposes of the removal of this case. See 28 U.S.C. § 1441(a) (“For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.”).

12. A copy of all process, pleadings, and orders served upon the defendants is filed with this notice.

13. The defendants will give written notice of the filing of this notice to the plaintiff, as required by 28 U.S.C. § 1446(d).

14. The defendants will file a copy of this notice with the Clerk of the Circuit Court for the City of Lynchburg, as required by 28 U.S.C. § 1446(d).

WHEREFORE, the defendants request that this action proceed in this Court as an action properly removed to it.

Dated: November 13, 2009.

Respectfully submitted,

Pendum LLC

By Counsel

/s/

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And

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/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of November, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, and that a copy was sent U.S. Mail, postage prepaid to the following:

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/s/  
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